



COMMONWEALTH OF MASSACHUSETTS  
**Board of Registration  
of  
Hazardous Waste Site Cleanup Professionals**

**MINUTES  
of  
BOARD MEETING**

Held on  
**June 5, 2008**

Meeting Location: MassDEP's Central Regional Office  
627 Main Street  
Worcester, Mass.

Prepared by: A. Fierce

[Approved: July 17, 2008]

1. **Call to Order:** Chairperson Janine Commerford called the meeting to order at 3:26 p.m. The other Board members present were Gail Batchelder, Deborah Farnsworth, Christophe Henry, Gretchen Latowsky, Robert Luhrs, Paul Mullen, Debbie Phillips, Kelley Race, and Debra Stake. Kirk Franklin was absent. The LSP Board staff members present were Allan Fierce, Lynn Read, Brian Quinlan, Ron Viola, Terry Wood, and Al Wyman. Wes Stimpson and Lawrence Feldman of the LSPA were also present.
2. **Announcements:** Ms. Commerford announced that she had recently traveled to Trenton, New Jersey, at the invitation of the NJ Senate's Environment Committee. She said the Committee questioned her about the Massachusetts 21E program, a version of which NJ is considering adopting. On July 8, 9, and 10, 2008, New Jersey will be sending a delegation to Massachusetts to speak with a variety of 21E stakeholders and MassDEP staff.
3. **Agenda:** The Board members agreed to follow the draft Agenda.
4. **Minutes:** The Board reviewed the draft minutes of the meeting of the Board held on March 27, 2008. **A motion was made and seconded to approve the minutes as drafted. The motion was approved unanimously.**
5. **Decisions Regarding License Applicants:** The staff presented the following Application Dockets:

Docket No. 1: The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:

		<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
James F. Daley	OHI Engineering	#7394	210	A

Mr. Mullen was recused and left the room.

**A motion was made and seconded that the Board accept the recommendation from Application Review Panel #210, i.e., that the application submitted by Mr. Daley be accepted and that he be found eligible to take the exam. The motion was approved unanimously.**

Docket No. 2: The applicant's name, company name, application number, and Application Review Panel recommendation were read into the record:

		<u>App. No.</u>	<u>ARP</u>	<u>Rec.</u>
Jarrold P. Yoder	GeoInsight, Inc.	#8188	211	A

Mr. Mullen was recused and remained out of the room. Ms. Commerford was also recused and left the room.

**A motion was made and seconded that the Board accept the recommendation from Application Review Panel #211, i.e., that the application submitted by Mr. Yoder be accepted and that he be found eligible to take the exam. The motion was approved unanimously.**

Ms. Commerford and Mr. Mullen returned and rejoined the meeting.

**6. License Renewal Applications:**

**A. Renewal Dockets.** The staff presented the following License Renewal Dockets:

**Renewal Docket #1**

**License Renewal**

Renewal Date: April 30, 2008

Have met all requirements for renewal.

New Renewal Date: April 30, 2011

- |                            |       |
|----------------------------|-------|
| 1. Karen L. Brody          | #4757 |
| 2. Michael R. Burke        | #9395 |
| 3. Suzanne C. Courtemanche | #1078 |
| 4. Samuel P. Farnsworth    | #2352 |
| 5. Michael J. Farrell      | #3477 |
| 6. Alan D. Hanscom         | #2152 |
| 7. Jonathan D. Kitchen     | #7812 |

Minutes of LSP Board Meeting, June 5, 2008

- |                       |       |
|-----------------------|-------|
| 8. Lauren M. Lesinski | #4969 |
| 9. Janice K. McIntosh | #7609 |
| 10. Kevin J. Scully   | #1006 |
| 11. Stephen W. Smith  | #3837 |

**Renewal Docket #2**

**Request for a 90-day Extension**

Original Renewal Date: April 30, 2008

Qualify for and are requesting a 90-day extension.

Extended Renewal Date: July 29, 2008

- |                         |       |
|-------------------------|-------|
| 1. Jeffrey M. Hardin    | #2367 |
| 2. Jeffrey T. Mosholder | #8978 |
| 3. Stewart A. Mountain  | #1404 |
| 4. Jeffrey A. Nangle    | #1510 |

**Renewal Docket #3**

**Renewal after 90-day Extension**

Have met all requirements for renewal.

New Renewal Date: January 30, 2011

- |                           |       |
|---------------------------|-------|
| 1. Matthew J. Barvenik    | #1631 |
| 2. Michael P. Bingham     | #4141 |
| 3. Robert P. Blauvelt     | #5771 |
| 4. Ronald K. Burns        | #9492 |
| 5. Jeffrey A. Curtis      | #9749 |
| 6. John C. Drobinski      | #2196 |
| 7. Maureen Hill Collins   | #5876 |
| 8. Janet S. Humes         | #6215 |
| 9. Lawrence E. Kahrs      | #2890 |
| 10. John Kubiczki         | #4280 |
| 11. Robert A. Mullin      | #8186 |
| 12. Mark E. Nelson        | #7893 |
| 13. Michael A. Powers     | #3436 |
| 14. Stephen A. Sakakeeney | #5455 |
| 15. Marc W. Slechta       | #5082 |
| 16. Alvin J. Snyder, III  | #5309 |
| 17. Thomas J. Stevenson   | #5800 |
| 18. Anthony J. Tawa, Jr.  | #8097 |
| 19. Fred K. Taylor        | #5407 |
| 20. Roger P. Thibault     | #1443 |
| 21. Ellen R. Thibodeau    | #9119 |
| 22. Keith W. Veren        | #7343 |

- |                         |       |
|-------------------------|-------|
| 23. Joseph V. Vitale    | #6746 |
| 24. Edward P. Zimmerman | #6567 |

**Renewal Docket #4**

**Renewal After License Expiration**

Have met all requirements for renewal.

New Renewal Date: July 30, 2011

1. William C. Beyer #8842 (exp. 1/30/08)
2. Mark A. Worthington #8316 (exp. 1/30/08)
3. Paul G. Sutton #9240 (exp. 4/30/08)

**Renewal Docket #5**

**Renewal After 90-day Extension**

Has met all requirements for renewal.

New Renewal Date: April 30, 2011

1. Jeffrey A. Nangle #4839

A motion was made and seconded to (a) renew to licenses of the LSPs on Renewal Dockets #1, #3, #4, and #5 for a three-year period ending on the date indicated in each Docket and (b) grant a 90-day extension to the LSPs on Docket #2. The motion was approved unanimously.

**B. License Expirations.** The staff reported that the licenses of the following LSPs lapsed at the close of business on the dates shown when they did not renew their licenses:

		<u>License Lapsed</u>
1. Paul G. Sutton	#9240	4/29/08 (after 90-day ext.)
2. Patricia deGroot	#9568	4/30/08
3. Daniel E. Walsh	#3049	4/30/09

**8. Other Licensing-Related Matters:**

**A. New Panel Assignments and Scheduling.** Mr. Quinlan sought volunteers for Application Review Panels #212 and 213. The Board members present all volunteered, and they agreed to let Mr. Quinlan select the members he needs for these two ARPs.

**B. Appeals Status Report.** Ms. Wood reported that there are no pending appeals regarding the Board's denial of a license application.

**C. Inactive Status Report.** Mr. Fierce reported that since the previous meeting the following LSPs have been placed on Inactive Status at their request:

1. Edward Kearney #3717 on 4/5/08; and
2. Brendan MacDonald #3533 on 4/18/08

**D. Withdrawn from the Profession and Surrendered Licenses.** Mr. Fierce reported that the following LSPs have voluntarily withdrawn from the profession and surrendered their licenses:

Keith Dubois	#7530	effective c.o.b. on 3/28/08
Larry S. Cohen	#3521	effective c.o.b. on 5/5/08

**E. Licenses Suspended for Non-Payment of Annual Fee.** Mr. Fierce reported that on the dates shown below the following LSPs had their licenses suspended for non-payment of the Annual Fee. They each have 90 days to pay the Annual Fee or their licenses will lapse and they will have to reapply.

Jeffrey Barnes	#9609	on 6/2/08	
Philippe Dubreuilh	#5529	on 6/2/08	(from Inactive Status)
William Barney	#9487	on 6/3/08	
Lance LaFave	#8174	on 6/3/08	
Gary Jaworski	#2072	on 6/4/08	

**F. Total Number of Active and Inactive LSPs.** Mr. Fierce reported that the total number of Active LSPs as of the date of this meeting was 545. In addition, 6 LSPs remain on Inactive Status.

**9. Examinations:**

**A. New Licensees.** Mr. Fierce reported that the following approved applicants passed the licensing exam on either April 2 or May 29, 2008, and are now LSPs:

<u>Name</u>	<u>Licensure Date</u>	<u>License No.</u>
Martin Hilfinger	4/4/08	#7675
Chester Myers	4/4/08	#1701
Leni-Sarah Boucher	6/2/08	#8303
Mark E. Brochu	6/2/08	#4938
David J. Foss	6/2/02	#4695

**B. Next LSP Exam.** The staff reported that the next exam has yet to be scheduled.

6. **Continuing Education Committee Report:**

**A. Course and Conference Approval Requests.** Mr. Henry reported that the Committee had met earlier in the day and had the following course and conference recommendations to present to the full Board:

Sponsor: Battelle

Conference Title: *Sixth International Conference, Remediation of Chlorinated and Recalcitrant Compounds*

Credits Requested: Conference credit (50% of hours attended)

Committee Recommendation: **Approve for Conference credit.**

Sponsor: MassDEP

Course Title: *Implementing and Maintaining Remedy Operation Status – A Case Study Approach* [SERO Night]

Credits Requested: 2 DEP Course / Regulatory credits

Committee Recommendation: **Approve for credits requested.**

Sponsor: MassDEP

Course Title: *The 2007 MCP Revisions*

Credits Requested: 2 DEP Course / Regulatory credits

Committee Recommendation: **Approve for credits requested.**

Sponsor: National Ground Water Association

Conference Title: *2008 NGWA Conference on Eastern Regional Ground Water Issues*

Credits Requested: Conference credit (50% of hours attended)

Committee Recommendation: **Approve for Conference credit.**

**A motion was made and seconded to accept the Committee's recommendations. The motion was approved unanimously.**

**B. Other Business – Requests for Clarification of Board Policy on Use of “Overlapping” Credits.** The Committee reported that it had reviewed three requests for clarification of the Board's regulations and/or policy regarding use of what have been called “excess” or “overlapping” continuing education credits.

Two LSPs, Francis Hopcroft and Lawrence Kahrs, requested clarification on applying “excess” credits earned during a 90-day license renewal extension period toward their following three-year renewal cycle. A third LSP, Neil Shifrin, whose license had lapsed for lack of sufficient credits, was within the one-year period during which he could earn the remaining continuing education credits he needed

to renew his license. He requested clarification on whether he could use 24 “excess” credits acquired during the lapsed period toward his subsequent three-year renewal cycle.

In both cases, the “excess” credits in question were earned **prior** to earning the final credits needed for each LSP’s current license renewal.

The Committee members first discussed the cases of the LSPs in the 90-day extension period.

#### In 90-day Extension Period

Mr. Fierce pointed out that the relevant regulatory language is found in the first and third sentences of 309 CMR 3.09(2)(a). The first sentence reads: “***Every three years following issuance of his or her license, each LSP shall demonstrate to the Board’s satisfaction that he or she has earned a minimum of 48 continuing education credits.***” [Emphasis added.] That sentence could be read strictly to mean that only credits earned **after** issuance of a license renewal may be used for the next license renewal. The third sentence reads: “*No person may apply continuing education credits earned during one license period toward another license period.*” If a “license period” does not end until one actually renews a license, this sentence could be read strictly to preclude the use at a future renewal of any “excess” credits earned during a 90-day extension.

After some discussion at the Continuing Education Committee meeting, the Committee members agreed to recommend that the Board not interpret these sentences so strictly. Their view was that the intent of these sentences was simply to impose a requirement to obtain 48 credits in each renewal period. For LSPs who receive a 90-day extension and obtain the credits they need to renew during this extension period, the beginning of their next 3-year renewal period remains unchanged, i.e., it reverts back to the first day of the 90-day extension period. See 309 CMR 3.06(5)(b). Thus, their next “license period” could be viewed to begin then. Therefore, the Committee members agreed to recommend to the full Board that all LSPs (not just Mr. Hopcroft and Mr. Kahrs) be allowed to apply course credits earned during the 90-day extension period towards either their current or their next renewal requirement, irrespective of the order in which the courses were taken.

In connection with this recommendation, the Committee members noted the limitation posed by 309 CMR 3.06(5)(e), which states: “*No portion of the credits for a continuing education course required to fulfill the requirements of one renewal period may be carried over into the subsequent renewal period.*” In light of this regulatory language, the Committee further agreed to recommend that the Board reaffirm its current practice and not allow credits from any course taken

during the 90-day extension period to be split between an earlier and a latter license renewal application.

The Committee voted unanimously to make these recommendations to the full Board.

#### In 1-Year Lapse Period

Next, the Committee discussed Mr. Shifrin's request to use at his subsequent license renewal the 24 "excess" credits he earned within the one-year lapsed period prior to earning the 4 DEP Course credits he needed for his most recent renewal.

First, Mr. Fierce pointed out the regulatory language in 309 CMR 3.06(4) that creates a new start date for the 3-year license renewal period for those who renew their licenses during the 1-year lapse period. Pursuant to this regulation, that new license renewal period commences on the 30<sup>th</sup> of January, April, July, or October, *"whichever date is or occurs soonest after the date the Board approves the license renewal."* There is no regulatory language that directly addresses whether an LSP's "excess" credits may be utilized at his/her next renewal. However, the "excess" credits were not earned during a prior "license period," since the individual's license had lapsed. This gave the Board some leeway to act on a case-by-case basis as it saw fit, Mr. Fierce said, so long as the Board does not act in an arbitrary and capricious manner in dealing with similarly situated LSPs.

The staff noted that the Board had granted one previous request of this type. In 2006, the Board allowed an LSP to use at his subsequent renewal the 14 "excess" credits he earned during a lapse period. According to the minutes of that Board meeting, the members also tentatively agreed that whenever they decided to move forward with their next package of regulation amendments it would include an amendment that specifically allows LSPs to utilize up to 12 "excess" lapse period credits at the LSP's next renewal. That regulatory change has yet to be put in place, however.

After discussion, the Committee agreed to continue considering such lapse-period requests on case-by-case basis until such time as the Board adopted a regulation addressing this issue. In this case, the Committee voted unanimously to recommend that the Board grant Mr. Shifrin's request to use all 24 of his "excess" credits toward satisfying his subsequent renewal requirements. The Committee also agreed to reaffirm its recommendation to the Board that the next set of regulation changes include the 12-credit maximum favored in 2006.

The Board discussed this recommendation from the Committee. At the conclusion of discussion, **a motion was made and seconded to approve Mr. Shifrin's request to use at his next renewal the 24 "excess" credits he earned**



during his “lapse period.” The motion was approved unanimously. [The Board took no action on the Committee’s reaffirmed recommendation to include a 12-credit maximum in any future regulation addressing the use of such “excess” credits.]

7. **Professional Conduct Committee:** Since all the Board members present at this meeting were also present at the Professional Conduct Committee meeting held earlier in the day, the Board agreed to forego a Committee report.
8. **Personnel, Budget, and Fees:** Mr. Fierce handed out a summary report of this year’s Legislative budget actions on the LSP Board’s budget for FY-2009, which begins on July 1. The report indicated that because the House approved \$391,725 and the Senate approved \$414,879, a Conference Committee would have to decide what the Board’s final budget number should be.
9. **Status of Board Member Replacements by Governor:** Ms. Commerford reported that there is nothing new to report. She believes that background checks remain underway for both of the candidates recommended to the Governor.
10. **Next Article for LSPA News:** Wes Stimpson reported that the next deadline for the submission of articles is June 30, 2008. The Board agreed that the staff should prepare an article informing the LSP community that the Board has decided to remove dismissed complaints from the disciplinary record shown on the Board’s website for each LSP.
11. **Scheduling of Next Meeting:** The Board agreed to hold its next meeting on July 17, 2008, at Weston & Sampson in Peabody. The following meeting will be held on August 21, 2008, at a location to be determined in or near New Bedford.
12. **Adjournment:** The meeting was adjourned at approximately 5:52 p.m.